

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
Eastern Division

Patricia Anne Cotton, etc., et al.

Plaintiffs

Vs.

Beta-Com, Inc. etc., et al.

Defendants

Case No.

CV-06-BE-1486-E

EXPERT WITNESS REPORT OF LAWRENCE J. PENNER

Pursuant to F.R. Civ.P.26 (a) (B), Lawrence J. Penner makes the following report concerning expert opinions and testimony;

1.

I am over the age of eighteen (18) years, and make this report based upon a visit to the tower site where William Eugene Cotton II was fatally injured in an accident on March 10, 2006 and a review of the materials listed below:

1. Complaint and First Amended complaint
2. Defendant Cingular Wireless' Response to Plaintiff's Request for Production of Documents; (w/attachments)
3. Defendant Westtower's Answers to Interrogatories and Request for Production (w/attachments)
4. Defendant ALT, Inc.'s Answers to interrogatories and Request for Production: (w/attachments)
5. Defendant ALT, Inc.'s First supplement to its Responses to Plaintiff's Request for production; (w/attachments)
6. Defendant ALT, Inc.'s Second Supplement to its Responses to Plaintiff's First Set of Request for Production; (w/attachments)
7. Crown Castle South LLC's Responses to the Plaintiffs Interrogatories and Request for Production of Documents (w/attachments)

8. Depositions of Eric Davis, Jason Cook, Jeff Silva, Josh Cook, Adam Waterman, Randy Wheeler, Matt Deadnond, Dustin Drollinger, Rob Camp and Nathan Ross.
9. Expert Reports of Girard Turner, Dr. Clark and Jimmy Coleman.
10. Photographs of the Site provided by the Defendant's Attorney
11. The Broken short lengths of rope that had been used to lower the antenna

2.

My personal qualifications and professional affiliations are provided in the form of a CV attached to this report.

3.

It is my opinion that the work plan utilized by the ALT crew on site was sound and appropriate for the work required for this project. The size of the crew used, the equipment that they deployed to the site, the method of rigging the tower and the subsequent lowering/raising of loads and the method of communications between crew members while performing the work on and off the tower is the industry norm and acceptable for this type of project

4.

It is my opinion that the undertaking of this type of tower work (antenna and line changeout) while having other personnel working on or installing equipment inside a concrete shelter at the base of the tower is appropriate and common.

5.

It is my opinion that an experienced person exiting the radio building at the base of the tower would have in their field of vision the hoist line running from the ALT Capstan Hoist (as set up on the day of the accident) to the top of the tower.

6.

It is my opinion that it is not common industry practice for a wireless carrier to have hands on direction and control over contractors at a tower site during an equipment upgrade project whereby that wireless carrier would be directing the contractor personnel on how and when to do their jobs or providing means for those contractors to communicate while on site.

7.

It is my opinion based upon experience in this industry that working in this industry while under the influence of an illegal drug is not safe or appropriate

8.

It is my opinion that it is not common industry practice for a wireless carrier to direct multiple contractors, on the same communication system site, working on the ground and on the tower as to how to conduct their work in a safe manner. It is common practice for the wireless carrier to rely on the contractors to implement their own safety protocols and practices.

9.

I have not had any documents published.

10.

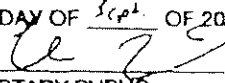
I have provided an expert report and testified at trial for Great Plains Christian Radio Inc. Vs. Central Tower, Inc. and Ray Ryan in the United States District Court, District of Kansas case No. 2:04-CV-02559-JWL-JPO. I provided this service at the request of Vincent O'Flaherty of Spradley & Ricsmeyer, Kansas City, Missouri.

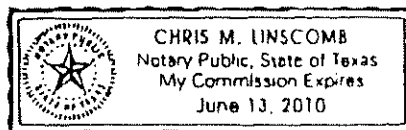
11.

I am being compensated for my time working on this case at a rate of \$180.00 per hour plus expenses.



Lawrence John Penner
September 4, 2007

SUBSCRIBED AND SWORN BEFORE ME
THIS 4 DAY OF Sept OF 2007

NOTARY PUBLIC
EXPIRATION 6/13/2010



Lawrence (Larry) J. Penner
6233 Baymar Lane
Dallas, Texas 75252
972-931-4899

Experience & Capabilities

Twenty-five years experience in the field of infrastructure development – principally in telecom and broadcasting. Extensive project management (national, international), professional engineering education, management of both national organizations and P&L. Considerable experience in towers and civils works.

Work Experience

Radian Communications, Ltd. 2002 – 2006
Toronto, Canada/ Dallas, TX
Retained under contract to hold various licenses and provide consulting services to a national organization in the infrastructure development business.

LeBlanc Broadcast Inc 1999 - 2002
Dallas, Texas
General Manager
Supervision of project managers managing significant Broadcast projects in the US with operational and P&L responsibility (30M revenue, 30 reports). Transitional executive during conveyance of LBI to Radian Communications. Direct supervision and resolution of a distressed sister company project in Asia.

LeBlanc Communications Inc 1996 - 1999
Dallas, Texas
Senior Vice President Corporate Administration
Total responsibility for field operations and profitability of a national/international contracting organization consisting of 7 regional branches and 30 senior / mid-level managers, specialists and with additional subcontracted firms and employees. Capital and operating budgets, operational analysis, over site of over 2,000 projects annually. Over \$80MM in annual projects. Responsibility for field policy, practice and safety compliance.

LeBlanc Communications Inc 1990 -1996
Sioux City, Iowa & Sacramento, California
Vice President Field Operations
Operational and P&L responsibility of LCI's branch operations in the Western USA. Additionally, integration of new acquisitions and opening new branch operations. Establishment of a national project tracking system. Administration of capital budgets, operating budgets. \$60MM revenue, 150 reports.

LDL Communications

1987 - 1989

Laurel, Maryland

Vice President Operations

Field project management of major broadcasting infrastructure projects throughout the USA for this joint venture between an American and United Kingdom manufacturer of broadcast products. Outside plant integration and project execution. Management of over 70 employees and activities in 15 States.

L&R Communications

1984-1987

St Louis, Missouri

Manager of Operations

Spearhead manager of field operations for the American entry of a Canadian tower and television transmitter manufacturer. Established policy and procedure. Hired initial field employees. Part of the transition team after acquisition of American manufacturing facilities.

1979 -1983 Various field assignments in Canada and the Middle East including structural/project engineering and branch manager roles

1976-1979 Structural Engineer designing communication towers and auxiliary equipment in Oakville Ontario.

Education

University of Winnipeg, Collegiate Division, Winnipeg, Manitoba

University of Manitoba, Faculty of Engineering

B.Sc. in Civil Engineering with honors.

Professional Associations

Canadian Professional Engineer

Member of the Association of Professional Engineers of Ontario

Qualified Responsible Managing Employee for Contractor's licenses in California, Nevada, Arizona, New Mexico, Utah, Tennessee, North Carolina, Louisiana, Oregon and Florida